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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,273	08/09/2001	John D. Ralston	9824-075-999	6570

38881 7590 09/08/2005

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EXAMINER
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GEREZGIHER, YEMANE M

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,273

Applicant(s)

RALSTON ET AL.

Examiner

Yemane M. Gerezgiher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response/amendment received on 06/16/2005 has been entered. Claims 1-26 remain pending in this application.

### ***Response to Arguments***

2. Applicant's arguments filed 06/16/2005 have been fully considered but they are not persuasive.
  - (a). In the remarks/arguments on Page 13, Lines 1-5, the inventive entity argues as follows:

“Reichmeyer does not teach, or even suggest, configuring a communication device to implement a communication application, as required by claims 1, 2, 14, and 15. Examples of the claimed communications applications are listed in the specification on page 7, line 4 et seq., and include for example, CDMA wireless communication standards such as 1S-95, 3GPP-FDD etc. Thus, the claims are patentable over Reichmeyer for at least this reason”.

→ However, the examiner respectfully disagrees with that contention. First of all, the examiner points that the applicant's reasoning by providing examples of communication applications such as *CDMA wireless communication standards such as 1S-95, 3GPP-FDD...* is understandable. However, since the claims do not stipulate a

communication application been directed to the example provided (*CDMA wireless communication standards such as 1S-95, 3GPP-FDD...*) by the inventive entity, the claimed language is broad enough to logically read on the teachings of Reichmeyer as applied to the claims. Thus, the rejection is proper and is maintained. The teachings of Reichmeyer disclosed configuring a computing device, where the computing device is configured using a DHCP server. Having that said, since the configuration is performed in a computer networking system, the computing device as any other computer (a portable or a PC computer), inherently has multiple functional blocks (motherboard's chipset e.g. CPU, ALU, RAM, ROM and so forth) where some are fixed and other portions are programmable. Consequently, a configuration parameter is directed only to the programmable portion of the computing device.

- (b). The inventive entity further assert that Reichmeyer “also does not teach, or suggest, evaluating a capability of a fixed portion and a programmable portion of hardware, which are capable of operating a plurality of communication applications, for implementing the communication application, as also required by the claims. Reichmeyer has no need for evaluating the hardware before transmitting selected portions of configuration information because it does not transmit selected portions,

as also required by the claims. Rather, unlike the claimed invention, Reichmeyer loads all of its configuration information. Thus, the claims are patentable over Reichmeyer for these additional reasons" (arguments on Page 13, 2<sup>nd</sup> ¶)

→ The examiner once again respectfully disagrees with that contention. As it is clearly disclosed in the teachings of Reichmeyer, a DHCP server configures a DHCP client. In other words, a DHCP server only configures a DHCP client, and further in performing the configuration process, a DHCP server must first evaluate the communication device is a DHCP client and further evaluates a MAC address (hard-coded Fixed portion of a DHCP client/computing device) and dynamically allocates a virtual address (IP address) from a pool of IP addresses, which is configured in a programmable portion of the communication device, enabling the communication device to establish communication on the communication network using plurality of communication applications. Thus, the claim as recited is enormously broad, that it perfectly reads on the teachings of Reichmeyer as recited in the rejection applied to the claims.

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(c). The inventive entity further argues as follows:

“Kung does not suggest a communication device having a plurality of function blocks with a fixed portion of hardware and a programmable portion of hardware, which are capable of operating a plurality of communication services, and then limiting transmitted configuration information to the programmable portion of hardware of the communication device.” (Page 14, Lines 1-5 of ¶1).

→ However, examiner is not persuaded by the argument. **The inventive entity cannot show non-obviousness by attacking references individually where, as here the rejections are based on combination of references. In re Keller, 208 USPQ 871 (CCPA).** The rejection was established based on the combined teachings of Reichmeyer and Kung.

(d). The inventive entity further argues that the teachings of Kung “does not receive a bid from the user and have the system determine whether it can meet the user’s price” (Page 14, last 3 lines of 2¶) as recited in claims 13 and 26.

→ However, as recited in the previous action, Kung disclosed receiving a user offer based one the user-desired rate/price for a specific QoS and offering the user the requested QoS according to the offer made by the user (see Abstract, Column 2 Lines 20-52 and Column 34 Lines 1-55).

### **Claim Rejections - 35 USC § 102**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Reichmeyer et al. (U.S. Patent Number 6,286,038) hereinafter referred to as Reichmeyer.

Regarding to claims 1 and 14:

a) receiving a request to configure the communication device to run a communication application, the communication device having a plurality of function blocks with a fixed portion of hardware and a flexible portion of hardware, the same plurality of function blocks capable of operating a plurality of communication applications; (See ABSTRACT, Column 3 Lines 13-41: Reichmeyer disclosed a configuration server receiving a request from a network device on the network for configuration, the network device having therein a

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multiple functional blocks which are static or flash (flexible) portions in support of executing communication applications).

b) evaluating a capability of the fixed portion and the flexible portion of hardware of the communication device for implementing the communication application; (See Fig. 4 Column 2 Lines 50-64, Column 3 Lines 13-41, Column 7 Lines 1-26 and Column 8 Lines 18-42: Reichmeyer disclosed receiving information determining the status of static (fixed) and flash portions of the network device regarding the propagated to the configuration server and determining appropriate configuration parameters by learning about its physical (hardware portion) and the logical configuration information of the Network devices).

c) transmitting configuration information only for the flexible portion of hardware of the communication device to enable it to operate the communication application; (See Fig. 4, Steps 74-78 and Column 2 Lines 50-52) and

d) transmitting an identification of the communication application to the communication device. (See Column 1 Lines 36-44).

As per claims 2 and 15, wherein the configuration information is hardware configuration parameters. (See ABSTRACT: Reichmeyer disclosed configuration information parameters)



**Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-13 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichmeyer et al. (U.S. Patent Number 6,286,038) in view of Kung et al. (U.S. Patent Number 6,775,267) hereinafter referred to as Kung.

Kung disclosed a QoS application determining data-transmitting rate of the bandwidth in communication with the network device (claims 7-9 and Claims 20-22: See Abstract, Column 2 Lines 30-52). Kung further disclosed processing bill information of usage according to the QoS and adjusting or reducing cost by determining desired and actual QoS used and dropping the QoS when finishing service and billing the user accordingly (claims 11, 12, 24 and 25: See Column 16 Lines 4-29, Column 34 Lines 1-34 and Column 35 Lines 44-65) and evaluating user subscription to the service (claims 5, 18: See Column 40 Lines 25-51). Kung disclosed configuring the network devices for

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plurality of communication applications (Claims 3 and 16: See Column 23 Lines 14-24), upgrading and changing communication application configurable on the network devices (claims 4 and 17: Column 23 Lines 25-29 and Column 35 Lines 35-43) and transmitting specific information in to the flash memory of the network device to upgrade the required configuration of the communication application (Claim 6: Column 23 Lines 14-24). Receiving a user offer based on the user-desired rate/price for a specific QoS and offering the user the requested QoS according to the offer made by the user (claims 13 and 26) was disclosed by the teachings of Kung. See Abstract, Column 2 Lines 20-52 and Column 34 Lines 1-55.

As per claims 10 and 23: With respect to the rejection applied to claims 1 and 10 above, Reichmeyer substantially disclosed the limitation of claims 10 and 23. (See Rejection Applied to claims 1 and 24 above). However, Reichmeyer failed to teach sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the communication device to allow it to function at the selected quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device. However, as evidenced by the teachings of Kung, sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class

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of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the communication device to allow it to function at the selected quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device was known in the art at the time the invention was made. See Abstract, Fig. 7a-7c, Column 2 Lines 30-52, Column 3 Lines 20-46, Column 33 Line 66 through Column 35 Line 21 and Column 35 Lines 45-65.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Kung related to allowing users to select desired QoS in a communication network and transmitting configuration information configuring the communication network device to function/execute the application program in according to the selected cost and QoS selected by the end-user in order to allow users get service in accordance with desired QoS selected in real time at a cost the user(s) desire (See Column 3 Lines 20-52) “so that the priority of a given communication can be dynamically altered according to customer preferences, variable billing rates and tariffs, the user's bit rate requirements, the user's desired quality of service, traffic patterns, and/or congestion.” See Column 7 Lines 27-34.

**Conclusion**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane M. Gerezgiher whose telephone number is (571) 272-3927. The examiner can normally be reached on 9:00 AM - 6:00 PM Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached at (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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